IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

Sita Ram Vs. State of Rajasthan

S.B.CR. MISC. 3rd BAIL (SUSP. OF SENT.) NO.73/2008

IN

S.B.CRIMINA APPEAL NO.504/2006

DATE OF ORDER :: February 08, 2008

PRESENT

HON'BLE MR.JUSTICE H.R.PANWAR

Mr.R.S.Choudhary, for the applicant-appellant.
Mr.J.P.S.Choudhary, Public Prosecutor for the State.
Mrs.Deepika Vyas, for the victim prosecutrix.

This is third bail application filed by the applicant-appellant seeking suspension of sentence in the aforesaid appeal challenging the judgment and order dt. 3.5.2006 passed by the learned Special Judge, SC/ST (Prevention of Atrocities) Act Cases, Merta (for short `the trial court' hereinafter).

I have heard learned counsel for the applicant-appellant at length as initially Mr. R.S.Choudhary appearing for the appellant argued the matter on merit. However, learned counsel has given

up the arguments on merit and confined his arguments only on the point that the appellant has suffered imprisonment for three years and eight months out of seven years' sentence of rigorous imprisonment and the appeal is not likely to come up for hearing and in my view, rightly so as the earlier bail application by an elaborate order dt. 1.9.2006, came to be dismissed on merit.

Learned Public Prosecutor submits that this Court vide order dt. 1.9.2006, dismissed the application for suspension of sentence considering the entire material of the case and after dismissal of the earlier application for suspension of sentence, there being no change in the circumstances. Thereafter, the matter again came up before this Court on 26.3.2007 and the counsel appearing for the appellant did not press the application for suspension of sentence and prayed that the matter may be finally heard at an early date. The matter was posted for hearing and thereafter, it came up for hearing on 17.4.2007, 23.4.2007, 2.5.2007, 4.5.2007, 10.5.2007, 28.5.2007, 4.7.2007, 18.7.2007, 2.8.2007, 7.9.2007, 12.9.2007, 27.9.2007 and before this Court on 1.10.2007, counsel appearing for the appellant submitted that he is not prepared to argue the case and therefore, at his request, the matter was adjourned. Again, the matter came up before this Court on 22.10.2007, 25.10.2007 and 7.12.2007. On all these dates, the case was not

argued by the learned counsel for the appellant and at his request, it was adjourned. From the events noticed hereinabove, it appears that the matter was directed to be listed for hearing on 26.3.2007 and thereafter on several occasions as noticed above, the matter came up for hearing and on certain occasions, the learned counsel for the applicant-appellant submitted that he is not prepared to argue the matter and sought adjournments. Thus, it cannot be said that the matter has not been taken up for hearing. It appears from the events that counsel for the applicant-appellant is least interested in arguing the appeal on merit but he has been seeking the adjournments and on the ground of sentence of imprisonment undergone by the applicant-appellant, he seeks suspension of sentence. The contention raised by the learned counsel for the appellant that the appeal is not likely to come up for hearing runs contrary to the record and, therefore, cannot be accepted.

Learned counsel has relied on a decision of this Court in Mahaveer Singh vs. The State of Rajasthan, S.B.Cr.Misc. Second Bail Application No. 1289/2006 in S.B.Cr.Appeal No.35/2005, wherein the appellant therein had already undergone substantial period of sentence of three and a half years for the offence under section 307 I.P.C. and the appeal did not take up for hearing. This Court noticed that earlier application seeking

suspension of sentence came to be dismissed by order dt. 26.5.2006 and the appeal has not come up for hearing almost 11 months have since elapsed and the counsel stated that the appeal is not likely to come up for hearing in near future relying on a decision of Hon'ble Supreme Court in Kamal Vs. State of Haryana, **(2004) 13 SCC 526.** The sentence awarded to the appellant therein was suspended.

In the instant case, as noticed above that the appeal came up for hearing again and again and it is the appellant or his counsel, who had been seeking adjournment on certain occasions on the ground that he is not prepared to argue the matter. Therefore, the appeal could not be heard and decided.

In the case of Mahaveer Singh vs. State of Rajasthan, appellant therein was sentenced for the offence under section 307 I.P.C. for which there is no minimum sentence prescribed, whereas in the instant case, minimum sentence of seven years rigorous imprisonment is prescribed. In the circumstances, therefore, the decision relied on by the learned counsel for the appellant turns on its own facts and is of no help. I find no change in the circumstances after dismissing the earlier application seeking suspension of sentence.

The application for suspension of sentence is, therefore, dismissed. List the appeal for final hearing as ordered before the Bench hearing such appeals

[H.R.PANWAR],J.

m.asif/-